

MARYANNE GAFFNEY-KRAFT, D.O.  
MCBRAYER vs HON. GENE SCARBROUGH

July 15, 2020

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IN THE SUPERIOR COURT OF TIFT COUNTY  
STATE OF GEORGIA

SHERRI MCBRAYER, Individually )  
and as the surviving spouse of )  
JAMES AARON MCBRAYER, Deceased )  
and on behalf of Samuel Aaron )  
McBrayer and Jordan Janice )  
McBrayer, as the surviving )  
children of James Aaron )  
McBrayer, Deceased, )  
Plaintiff, ) CIVIL ACTION FILE  
vs. ) NO.: 2019CV347  
HON. GENE SCARBROUGH in His )  
Official Capacity as Sheriff of )  
Tift County, Georgia, )  
Defendant. )

Videotaped Deposition of  
MARYANNE GAFFNEY-KRAFT, DO

July 15, 2020

2:04 p.m.

5615 Riggins Mill Road  
Dry Branch, Georgia 31020

Susan W. Tarpley, CCR B-1489

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APPEARANCES OF COUNSEL:

On behalf of the Plaintiff:

CRAIG ALAN WEBSTER, Esquire  
The Webster Firm, PC  
405 Love Avenue  
Tifton, Georgia 31794  
229.388.0082  
cwebster@twflaw.com

On behalf of the Defendant:

TERRY E. WILLIAMS, Esquire  
Williams, Morris & Waymire, LLC  
4330 South Lee Street  
Building 400, Suite A  
Buford, Georgia 30518  
678.541.0790  
terry@wmwlaw.com

ALSO PRESENT: Sherri McBrayer

VIDEOGRAPHER: Tyler Tam

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1 MR. WEBSTER: This will be the  
2 deposition of Dr. Maryanne Gaffney-Kraft,  
3 taken by the plaintiffs in this action.  
4 This deposition is being taken for purposes  
5 of discovery and any other purpose allowed  
6 by the Georgia Civil Practice Act, the  
7 Georgia Rules of Evidence, and to whatever  
8 degree applicable, and possibly the federal  
9 rules of procedure and evidence.

10 We noticed this deposition and Doctor  
11 -- do you go by Dr. Gaffney-Kraft or just  
12 Dr. Kraft?

13 THE WITNESS: You can call me Kraft.  
14 That's fine.

15 MR. WEBSTER: Okay.

16 THE WITNESS: Uh-huh.

17 MR. WEBSTER: Dr. Kraft is here under  
18 subpoena, as is required by the rules of  
19 the Georgia Bureau of Investigation.

20 THE WITNESS: Yes.

21 MR. WEBSTER: All objections, except  
22 to the form of the question and  
23 responsiveness of the answer, will be  
24 reserved. The qualifications of the court  
25 reporter and videographer will be waived.

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1 And Dr. Kraft, do you choose to read  
2 and sign your deposition?

3 THE WITNESS: Yes, please. Uh-huh.

4 MR. WEBSTER: We'll stipulate, of  
5 course, that -- as I think the rule allows  
6 anyway, that Dr. Kraft can read -- can sign  
7 her deposition in front of any notary  
8 public instead of having to get with the  
9 court reporter herself.

10 THE WITNESS: Yes.

11 MR. WEBSTER: Terry, you want to add  
12 anything to that?

13 MR. WILLIAMS: No. That's good.  
14 That's agreeable.

15 MR. WEBSTER: Okay.

16 Now we're ready to begin.

17 THE VIDEOGRAPHER: Stand by.

18 We are on the record at 2:04. Today's  
19 date is July 15th, 2020. This is the  
20 beginning of Disk Number 1 in the  
21 deposition of Maryanne Gaffney-Kraft, MD.

22 My name is Tyler Tam, and I'm the  
23 videographer. The court reporter is Susan  
24 Tarpley.

25 Counsel, please state your appearance,

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1 including who you represent, beginning with  
2 the plaintiff's counsel.

3 MR. WEBSTER: I'm Craig Webster; and I  
4 represent the plaintiff, Ms. Sherri  
5 McBrayer, who is also present in the room  
6 today with us.

7 MR. WILLIAMS: I'm Terry Williams; and  
8 I represent the defendant, Sheriff Gene  
9 Scarbrough.

10 THE VIDEOGRAPHER: Will the court  
11 reporter please swear in the witness.

12 (Witness sworn.)

13 MARYANNE GAFFNEY-KRAFT,  
14 having been first duly sworn, was examined and  
15 testified as follows:

16 EXAMINATION

17 BY MR. WEBSTER:

18 Q. Tell us your full name, please.

19 A. Yes. My name is Dr. Maryanne  
20 Gaffney-Kraft.

21 Q. All right.

22 Dr. Kraft, where do you currently work?

23 A. I work for the Georgia Bureau of  
24 Investigation. I'm a central regional medical  
25 examiner for the state of Georgia.

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1 Q. Okay.

2 How long have you been with the Georgia  
3 Bureau of Investigation in this capacity?

4 A. Yeah. Since two thousand -- November  
5 2009.

6 Q. Okay.

7 Would you give us your educational and  
8 experience background in becoming a medical  
9 examiner.

10 A. Yes. As a medical examiner, I am a medical  
11 doctor. I've had four years of premedical training,  
12 majoring in biochemistry, at Temple University,  
13 Philadelphia, Pennsylvania; four years of medical  
14 school at the Philadelphia College of Osteopathic  
15 Medicine; one year of medical internship at the  
16 William Beaumont Army Medical Center, El Paso,  
17 Texas; four years of anatomical and clinical  
18 pathology training, Scott & White Hospital, Temple,  
19 Texas, Texas A&M; my first year of forensic training  
20 at the Wake Forest Baptist Medical Center in  
21 Winston-salem, North Carolina; and then a second  
22 year of forensic training at the University of  
23 Chapel Hill, North Carolina.

24 I am licensed to practice medicine in the  
25 state of Georgia. I am licensed as a board

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1 certified pathologist in anatomical pathology,  
2 clinical pathology and forensic pathology. I've  
3 actually started my forensic pathology course back  
4 in 2001 in North Carolina. I was there from 2001 to  
5 2009 when I came to Georgia in 2009.

6 Q. All right.

7 And you've been licensed in the state of  
8 Georgia consistently since 2009?

9 A. That is correct.

10 Q. Okay.

11 Why don't you begin by telling us what a  
12 medical examiner does.

13 A. Yes. A medical examiner is the -- is the  
14 -- is the everyday term for a forensic pathologist.  
15 As a forensic pathologist, I am board certified as a  
16 medical doctor to determine cause and manner of  
17 death.

18 A cause of death is why somebody dies when  
19 they die, exactly when they die. And then the  
20 manner of death comes into play, the circumstances  
21 surrounding their death.

22 In Georgia we have five different manners.  
23 You have natural, accident, suicide, homicide or  
24 undetermined.

25 I perform autopsies. During an autopsy I

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1 will start with an external examination, the seeing  
2 and documenting any clothing they have, any personal  
3 belongings, any medical intervention that they used  
4 to try to save their life, go on to characteristics,  
5 height, weight, hair color, eye color, things of  
6 that sort, body habitus, move on to an evidence of  
7 injury section where every injury the decedent has,  
8 something simple like a scratch that I call an  
9 abrasion or something major like a gunshot wound or  
10 something of that sort, will be documented, it will  
11 be photographed and measured. And then I will go on  
12 to the internal part of the examination.

13 During the internal part of examination,  
14 the body is dissected, the body is opened and the  
15 organs are removed. If I see an external injury,  
16 something like a bruise or a scratch or something of  
17 that sort, I'm going to see, during my internal part  
18 of examination, how the internal or -- internal  
19 organs of the body are affected from that injury.  
20 I'm also going to look for any natural disease,  
21 heart disease, cancers, things of that sort.

22 I will also draw toxicology samples.  
23 Standard tox is blood and urine from the decedent.  
24 And then we will submit them as needed for --  
25 depending on the case circumstances.

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1           Once that is finished I will actually put  
2           an autopsy report out documenting all my findings,  
3           also toxicology results or any other results that I  
4           needed to receive. Sometimes I'll do vitreous,  
5           which is a fluid in the eye, to check for  
6           electrolytes testing. And then I will determine  
7           what the cause and manner of death is.

8           Q. All right.

9           Did you, in fact, perform an autopsy on a  
10          man named James Aaron McBrayer on about 4/25/2019?

11          A. Yes, I did.

12          (Whereupon, Plaintiff's Exhibit 1 was  
13          marked for identification.)

14          MR. WEBSTER: All right. Let me show  
15          you what we've marked Exhibit Kraft Number  
16          1.

17          Terry, I've got you a copy here.

18          MR. WILLIAMS: I've got two.

19          MR. WEBSTER: Okay. That's fine.

20          MR. WILLIAMS: Yeah.

21          BY MR. WEBSTER:

22          Q. Take a look at that, Doctor, if you will,  
23          and tell us, is that your report of that autopsy on  
24          Mr. McBrayer?

25          And when I say report, I'm not including

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1 the toxicology results other than what you referred  
2 to in your report.

3 A. That is correct, yes. This is the official  
4 report of my autopsy.

5 Q. Okay.

6 Dr. Kraft, let me ask you this question.  
7 Having performed the autopsy on Mr. McBrayer on  
8 April 25th, 2019, did you determine a cause of death  
9 for Mr. McBrayer?

10 A. Yes, I did.

11 Q. And would you tell us what that cause of  
12 death was.

13 A. Yes.

14 The cause of death of Mr. McBrayer was  
15 excited delirium in conjunction with physical  
16 altercation, including (pronunciation) -- including  
17 taser use and cocaine and mitragynine  
18 (pronunciation) -- mitragynine toxicity.

19 Q. All right.

20 And did you classify this death?

21 A. Yes, I did.

22 Q. And would you tell us in what category you  
23 classified this death.

24 A. This was classified as a homicide.

25 Q. All right.

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1                   What do you mean by the term homicide?

2           A.   A homicide is a death that occurs either  
3 partially or fully secondary to the action of  
4 others.

5           Q.   Okay.

6                   In this case did you determine whether or  
7 not Mr. McBrayer's death was either partially or  
8 completely caused by the actions of other people?

9           A.   Yes, I did.

10          Q.   And which would you say it was, partial  
11 or --

12          A.   I would say partial.

13          Q.   And would you tell us why you -- you  
14 characterize it as partial.

15          A.   I characterize it as partial because of the  
16 autopsy findings. The individual injuries which  
17 were found during this autopsy in themselves would  
18 not have necessarily caused his death.

19                   We have injuries called blunt force  
20 injuries, which are things -- when something blunt  
21 strikes a body or the body strikes something blunt  
22 like a fall or a -- or a hit of something -- you  
23 know, somebody hitting somebody. These are blunt  
24 force injuries. There are abrasions, contusions,  
25 and lacerations, scrapes, tears in the skin or

1 bruising and then subsequent injuries internally,  
2 such as hemorrhages, that you might see in the  
3 internal tissues.

4 Mr. McBrayer did have blunt force injuries,  
5 but the injuries in themselves were not enough to  
6 cause his death.

7 Q. All right.

8 A. Other injuries that were found were  
9 entitled under conductive energy weapon injuries,  
10 which is classically known as taser. A taser is a  
11 -- is a device that is used that puts electrical  
12 shock through the body. It is done via either  
13 probes that are shot out of a weapon and impale  
14 themselves into the skin of the body or by the --  
15 the instrument itself, which has two metal probes on  
16 it that you can touch a body with.

17 These injuries were seen; but again, those  
18 injuries in themselves, when taken with the  
19 investigative findings, would not have caused  
20 Mr. McBrayer's death.

21 Other findings that I found is natural  
22 disease findings, cardiomegaly, which is the other  
23 term for enlarged heart. That in itself could cause  
24 somebody's death; but again, usually when I see just  
25 an enlarged heart, it's going to have to have

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1 something else going on with it.

2 And then in Mr. McBrayer's autopsy I also  
3 found drugs in his system. Cocaine was in his  
4 system; and mitra- -- mitragynine, which was one I  
5 had to actually look up, was in his system. And  
6 these drugs actually would have been additive to his  
7 cause of death.

8 So them in themselves -- again, them in  
9 themselves may have caused his death by themselves,  
10 but I have to take -- when I look at a cause of  
11 death, I have to look at everything that's occurring  
12 of why somebody dies when they die. I can't just  
13 pull certain things out.

14 Q. All right.

15 Let's talk about a few of the things that  
16 you've just mentioned.

17 Number 1, you mentioned that Mr. McBrayer  
18 had a condition known as enlarged heart,  
19 cardiomegaly?

20 A. Yes.

21 Q. And had he died from that -- that -- that  
22 anatomical or disease process by itself, how would  
23 you have classified this death?

24 A. That would be a natural death.

25 Q. Okay.

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1 And you also mentioned that the toxicology  
2 reports indicated the presence of some drugs, namely  
3 cocaine and --

4 A. Met- --

5 Q. I'm going to use the street -- not the  
6 street but the marketing name of it, kratom. Is  
7 that --

8 A. Yes. That's fine.

9 Q. -- also what you -- okay.

10 A. That's much easier.

11 (Cross-talk.)

12 Q. It's a little easier to say.

13 Which is -- if you had decided that  
14 Mr. McBrayer's death was exclusively due to the  
15 presence of cocaine and kratom in his blood,  
16 how would you have classified that?

17 A. That would have been an accidental death.

18 Q. Okay.

19 In this case you chose not to classify it  
20 as either of natural cause or accidental death by  
21 reason of what was in his blood. Why in this case  
22 did you choose homicide as the classification of  
23 this death?

24 A. Homicide was chosen because we do have  
25 actions of others -- again, this is part of -- part

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1 of this is through the investigation findings --  
2 others, again, resulting in the blunt force  
3 injuries -- I can't say all the blunt force injuries  
4 occurred secondary to the actions of others, 'cause  
5 some of them may have been brought on by himself --  
6 but the conductive energy weapon, the taser  
7 injuries, also.

8 So if I have injuries or external forces  
9 acting on the body, then that brings it into the  
10 homicide classification.

11 Q. Okay.

12 And in this case you know for fact -- know  
13 from the history given to you that the officers  
14 detaining Mr. McBrayer did, in fact, discharge taser  
15 weapons, conductive energy weapons?

16 A. Yes.

17 Q. Okay.

18 All right. Let's -- let's shift gears just  
19 a little bit and talk about something that we  
20 haven't really discussed other than in your  
21 inclusion of it in the cause of death description,  
22 and that is excited delirium.

23 A. Yes.

24 Q. Would you tell us what excited delirium is.

25 A. Excited delirium is a physiological

1 response of the body to a struggle. In the classic  
2 form of excited delirium, you have a person, a  
3 decedent in this case, that prior to death was  
4 hyperactive, irrational -- acting irrational, acting  
5 just kind of out of their mind; and because of this  
6 there is a struggle that ensues secondary to either  
7 somebody trying to subdue the decedent to prevent  
8 him from hurting himself or others.

9 When the struggle occurs, no matter if it's  
10 a physical struggle or anything of that sort -- in  
11 this case we have the physical altercation which is  
12 both the blunt force injuries, the physical struggle  
13 and the electrical taser -- taser use. Because of  
14 those -- because of the struggle, because of those  
15 happenings, things happen in the body and it's a  
16 physiological response.

17 Basically you have release of what --  
18 things called catecholamines, which classically are  
19 epinephrine and norepinephrine. These are hormones  
20 that are released through the adrenal glands and  
21 these are the ones we always hear about when you  
22 hear of fight or flight that your -- your adrenal  
23 glands -- you know, your epinephrine goes up.

24 Epinephrine and norepinephrine have certain  
25 effects on the body. They actually are used to

1 increase the heart rate, to increase the contraction  
2 of the heart. So they make the heart contract more  
3 efficiently and harder.

4 Secondary to this, you're going to have a  
5 blood pressure rise and you're also going to have  
6 more demand of oxygen to the heart. So as your  
7 heart goes faster, just like if you're exercising,  
8 if your heart starts pumping faster and faster,  
9 you're going to need more oxygen to keep the heart  
10 pumping and you're going to have, you know, a higher  
11 blood pressure.

12 Also secondary to the struggle, you have  
13 release of potassium from the -- from the muscle  
14 cells. Potassium, as you use muscles, you're  
15 actually breaking down your muscles. That's what  
16 happens when you do physical activity, too. So  
17 potassium gets released into the bloodstream.

18 So during a physical struggle, you're going  
19 to have epinephrine and norepinephrine increased,  
20 which makes the heart contract more, high blood  
21 pressure, heart rate up, more oxygen demand of the  
22 heart; and the potassium's going to go up.

23 Classically, after -- well, what happens is  
24 during the struggle these things are happening. The  
25 problem comes in after the struggle. Once the body

1 is done struggling, two things happen. Your  
2 epinephrine and norepinephrine actually continue to  
3 go up for a period of time. So they don't just stop  
4 being in the bloodstream. They actually increase  
5 after the struggle, where your potassium actually  
6 decreases after the struggle and drops rapidly.

7 The norepinephrine and epinephrine can be  
8 increased for minutes to -- to hours or a couple  
9 hours after the physical struggle and the potassium  
10 actually can be decreased actually to a level where  
11 it's what we call hypokalemia where it's low  
12 potassium, subnormal level, for a period of hours,  
13 also.

14 Q. Can I interrupt you one second on that.

15 What's the importance of potassium as to  
16 what's happening with the heart?

17 A. Because potassium is a -- is a electrolyte  
18 which can become a cardio arrhythmogenic, it can  
19 cause arrhythmias, irregular heartbeats. Whether  
20 it's high or low, it's not good.

21 Q. Okay.

22 A. You need to have it within a certain level.

23 So again, the struggle itself will make it  
24 go high and then after the struggle it'll drop low.  
25 Low potassium's actually more severe than high

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1 potassium.

2 So you have a struggle that's goes on. No  
3 matter what's happening in the struggle, physical  
4 altercation, again electrical impulses. After the  
5 struggle the person is at rest or -- or being -- you  
6 know, meaning that they're not struggling anymore,  
7 you have these things going on in the body. The  
8 norepinephrine and epinephrine stay high, the  
9 catecholamines, the potassium drops low and drops  
10 lower than normal.

11 So this is setting the heart up for an area  
12 of what they call peril. They actually say  
13 post-exercise peril. In this case it would be  
14 post-struggle peril, because we have these two  
15 physiological things happening in the body. And  
16 both of these things -- one is making the heart pump  
17 harder, high blood pressure, high heart rate, more  
18 oxygen demand, which is going to make the heart  
19 stressed more, and then you have the low potassium  
20 which is going to make the -- make the heart more  
21 irritable and easy to go into an arrhythmia.

22 These two things together, again, would be  
23 the excited delirium.

24 Q. Okay.

25 A. Now, if you had added factors to those

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1 excited delirium -- and we do in this case, which is  
2 the drugs -- that just potentiates that problem.  
3 Cocaine is -- is a drug that is a stimulant. It  
4 actually causes the release of catecholamines. So  
5 you also -- you have your normal heart, your normal  
6 physiological body result or response and then you  
7 have the chol- -- the cocaine on top which is even  
8 pushing it more to that level.

9 The mitragynine, or kratom, which is the  
10 common name for it, is a herbal drug which is used  
11 in Southeast Asia. I actually had to look it up  
12 myself 'cause I'm not real familiar with it 'cause  
13 it's not -- we don't see it that often.

14 But it is a drug that, although it is used  
15 through the opiates receptors of the body, it's a  
16 drug that at certain levels is actually used for  
17 excitement. It's a drug that is -- usually the leaf  
18 is chewed for somebody to get energy. It becomes  
19 excited, things of that sort. And then at a certain  
20 level -- at low levels, it's excitability; at higher  
21 levels it tends to act as an analgesic for pain  
22 relief.

23 Kratom in itself actually has caused  
24 deaths. Because of that, it can cause seizures, it  
25 can cause sudden death, especially of people with

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1 underlying heart disease.

2 So again, we still have that excitability  
3 in there. The cocaine's going to cause the  
4 excitability of the heart, the kratom's going to  
5 cause excitability of the heart, the physical  
6 struggle's going to cause it and then you have this,  
7 without -- lack of better words, perfect storm being  
8 set up where somebody is going to be at high risk  
9 for having an arrhythmia and -- and sudden death.

10 Q. Where does the taser fit into all of that  
11 description that you just gave us?

12 A. The taser in itself, again the electrical  
13 impulse, you know, there has been -- there have been  
14 some history of cases that they have caused the  
15 cause of death because of the electrical impulse  
16 itself. Those type of cases, you die right after  
17 the impulse. So what happened is the electrical  
18 impulse of the taser is interfering with the  
19 electrical impulse of the heart and you die then.

20 But if you if get tased and then -- and you  
21 don't die and then minutes later, half an hour, ten  
22 minutes later or something and then you die, then  
23 the way the taser comes into play on that one is  
24 because again, it's just increasing the struggle,  
25 increasing all these things. Again, if I -- if I

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1 hit you with an electrical impulse, it's going to  
2 make your catecholamines go up. It's just -- you  
3 know, it's the body's response to it.

4 Q. Catecholamines being the epinephrine?

5 A. And norepinephrine. Correct.

6 Q. And norepinephrine somehow. Okay.

7 All right. Let me first ask you before we  
8 go any further, did you actually view the body cam  
9 video from the police officers regarding the  
10 detention and struggle with Mr. McBrayer?

11 A. I have viewed parts of them, not all of  
12 them.

13 Q. Okay.

14 A. Basically what -- I had asked for the GBI,  
15 who did the investigation, to send me everything.  
16 Some of it was in written report and some of it were  
17 -- were -- some of that was video cam.

18 Q. Uh-huh.

19 A. So I've seen pieces of all. Otherwise,  
20 I've looked at the GBI report where they actually  
21 document what the individual shows.

22 Q. Did you -- do you remember seeing the --  
23 the video cam -- cam video -- body cam video --  
24 excuse me. I couldn't get that out right.

25 A. Sure.

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1 Q. -- of Officer Tripp, who was the first  
2 officer to arrive and see and record Mr. McBrayer's  
3 actions before a struggle actually ensued?

4 A. That one, I do not -- I did not see.

5 MR. WEBSTER: Okay.

6 All right. Let's go off the record  
7 just a second.

8 THE VIDEOGRAPHER: Off the record at  
9 2:24.

10 (Off the record.)

11 THE VIDEOGRAPHER: Back on the record  
12 at 2:28.

13 MR. WEBSTER: Okay. Before we go  
14 further in questions, I just want to state  
15 on the record that we, during the break,  
16 viewed the first three minutes of the -- of  
17 Officer Tripp's body cam.

18 Do you need to verify that, or no?

19 MR. WILLIAMS: No. That's all  
20 right.

21 MR. WEBSTER: All right.

22 BY MR. WEBSTER:

23 Q. All right. All right. Dr. Kraft, my first  
24 question to you is this -- well, did you look at the  
25 video that we just talked about?

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1 A. Yes, I did.

2 Q. Okay.

3 From the first visions of Mr. McBrayer in  
4 that video to the point at which they had him on the  
5 ground, about three minutes into the video, did you  
6 see enough there to -- to render an opinion as to  
7 whether or not Mr. McBrayer was suffering from  
8 excited delirium prior to a struggle?

9 A. Well, again, the excited delirium is -- is  
10 the whole situation. So it -- meaning excited  
11 delirium also brings in the struggle.

12 Q. Okay.

13 A. But again, the classic definition of  
14 excited delirium is that you start with somebody who  
15 is irrational, who is confused, who is hyperexcited  
16 and then becomes violent. And for those that -- for  
17 that definition, yes --

18 Q. Okay.

19 A. -- then I saw evidence of that.

20 Q. Okay.

21 Did -- did you see enough evidence to  
22 decide whether or not he was -- that Mr. McBrayer  
23 was experiencing diminished capacity? And by that I  
24 mean diminished ability to form criminal intent and  
25 to make effective decisions for his own life.

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1 MR. WILLIAMS: I object to the form.

2 THE WITNESS: I would -- my answer to  
3 that was he appeared to be acting  
4 irrational.

5 BY MR. WEBSTER:

6 Q. Okay. All right.

7 Have you seen excited delirium in other  
8 autopsies you've performed with the GBI?

9 A. For the GBI, yes, actually yes.

10 Q. Okay.

11 And what is the prevalence of excited  
12 delirium, in cases that you see, first of all?

13 MR. WILLIAMS: I object to the form,  
14 just -- I don't know -- vague, ambiguous.

15 Go ahead, if you can respond.

16 THE WITNESS: Again, I'm not sure what  
17 the prevalence is as far -- as far as my  
18 experience, it's -- it's not very common.

19 BY MR. WEBSTER:

20 Q. Okay.

21 All right. Is it a medical condition, in  
22 your opinion?

23 A. Well, it is a -- it -- no, meaning -- no, I  
24 mean, it's not a medical diagnosis per se -- well,  
25 it's a diagnosis based on multiple factors. So --

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1 and again, I don't think -- and as far as I  
2 understand it and I have related it as far as my  
3 understanding and teaching or -- is that it is used  
4 for somebody who dies.

5 So again, it's -- you know, it's a  
6 medical -- medical-legal diagnosis for somebody's  
7 death; but as far as would a doctor diagnose  
8 somebody with excited delirium, you know, I don't  
9 know about that.

10 Q. Well, first of all, do you know whether or  
11 not there is a medical response to excited delirium  
12 before it becomes fatal; in other words, is there a  
13 way to treat it to make sure that it doesn't lead to  
14 death, to your knowledge?

15 A. As far as -- it's just going to be  
16 observation.

17 Q. Okay.

18 A. Yeah.

19 Q. Have you not -- have you seen any medical  
20 literature that talks about the use of carotene  
21 injections or other injections to bring the delirium  
22 down within a few minutes to increase the  
23 survivability of that condition?

24 A. No, I haven't. But again, you would have  
25 to -- you have to have somebody observing that to be

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1 able to diag- -- to be able to -- to make that  
2 diagnosis, meaning a heart monitor and everything  
3 else. So...

4 Q. Okay. All right.

5 So in Mr. McBrayer's case, the excited  
6 delirium process, in your mind, started with what  
7 you first saw in this video and ended with the end  
8 of the struggle and, at some point, his death; is  
9 that a fair synopsis of what you consider to be the  
10 excited delirium episode?

11 A. Yes.

12 Excited delirium is basically the whole  
13 situation encompassed in one, again, his -- you  
14 know, his actions leading to, you know, a struggle,  
15 again to whether to prevent him from hurting himself  
16 or others and then -- and then the subsequent, you  
17 know, struggle, different things that happened  
18 during the struggle and then the stop of the  
19 struggle.

20 Q. Okay.

21 Let me go to the beginning -- potential  
22 beginning points of the ex- -- excited delirium.  
23 Were you aware of the fact that Mr. McBrayer had  
24 been involved in a automobile collision prior to the  
25 police arriving at the scene or the sheriff's

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1 arriving at the scene?

2 A. Yes. Yes, I was.

3 Q. And in your autopsy of Mr. McBrayer, did  
4 you, in fact, find evidence of trauma to his head?

5 A. He did have trauma to his head, yes.

6 Q. Can you describe for us what that trauma  
7 consisted of.

8 A. Yes.

9 Mr. McBrayer had multiple blunt force  
10 injuries -- again, these are injuries that occur  
11 when something blunt strikes the body or the body  
12 strikes something blunt -- consisting of superficial  
13 abrasion of his right lateral lower forehead.

14 Q. Can you point to your head and show us  
15 where that would be.

16 A. Yes. That would be in the general of the  
17 forehead, of course, above the eyes; and right  
18 lateral would be right side of the forehead.

19 Q. Okay.

20 A. And then he had, on the right lateral  
21 orbit -- orbital rim, which is, again, right lat- --  
22 towards the side of the right eye, he had a  
23 superficial abrasion. On his maxillary cheek, which  
24 is the main cheek area, he had a small abrasion.  
25 And then on his left lateral jaw line/upper neck

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1 area -- so again, around the upper neck on the  
2 side -- jaw line, of course, is just following your  
3 jaw -- he had superficial abrasions, also, multiple  
4 -- three superficial abrasions.

5 He also had what's called subgaleal  
6 hemorrhages -- subgaleal hemorrhages are bruises of  
7 the scalp. So basically during the autopsy the  
8 scalp is reflected off the skull so I can look at  
9 it -- on the left occipital scalp, which is the left  
10 back of the scalp, and also on the left posterior  
11 parietal scalp, the -- occipital's the lower part,  
12 the posterior parietal's the upper part of the back  
13 of your head -- he did have subgaleal hemorrhages,  
14 which are, again, bruises of the soft tissue,  
15 measuring two and a half times two inches on the  
16 occipital and one times one inch on the parietal.  
17 And then he had a small occipital right-sided  
18 occipital subgaleal hemorrhage of one times  
19 three-fourths inches.

20 The skull itself was intact; but when I  
21 opened the skull and looked at the brain, he did  
22 have a thin, diffuse subdural hemorrhage. Your  
23 brain is surrounded by multiple membranes, the pia,  
24 this -- arachnoid and the dura. The dura is the  
25 thicker membrane. It's a fibrous membrane. So it

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1 sits between the skull and the brain. And subdural  
2 just means hemorrhage under that membrane.

3 Q. And where was that on his head?

4 A. And that was diffuse. It was all around  
5 the head. And it was thin and it was diffuse and it  
6 measured less than 10 millimeters or 10 ccs in  
7 measurement.

8 Q. Okay.

9 A. Otherwise, the skull and the brain  
10 parenchyma, which is the tissue of the brain, was  
11 without evidence of injury.

12 Q. The subdural bleeding, thin as it was, do  
13 you have an opinion, within a reasonable degree of  
14 medical probability, as to how that occurred to his  
15 brain?

16 A. It is a result of a blunt force injury.

17 Q. How so? How does that happen in a blunt --  
18 blunt force injury?

19 A. It's -- it's -- it's a motion type of  
20 injury. Basically you have vessels that -- veins  
21 that come from the brain area into the -- into the  
22 dura area. And with turning -- a motion of the  
23 head, whether it be forward backward motion, side,  
24 side, but a rapid type of motion that the brain  
25 actually -- the brain's in the skull, it's floating

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1 in some fluid. Now, there's not a lot of space but  
2 there's some space. So it actually is able to move  
3 a little bit.

4 So with a swift -- with a swift movement of  
5 the head, a rapid acceleration/deceleration, either  
6 lateral or forward or backward, you can have that  
7 brain shift. And when that brain shifts, it can  
8 tear these veins and you'll get a subdural  
9 hemorrhage.

10 So in -- in this case, the car accident --  
11 or the truck accident may have caused it or the  
12 falls to the ground may have caused it.

13 Q. Okay.

14 If you were to assume that the results of  
15 his automobile collision were a shattered windshield  
16 on the driver's side where it appears to some to  
17 look like somebody's head hit that windshield, would  
18 that be a sufficient trauma to explain the subdural  
19 bleeding that you saw?

20 A. Yes, it would.

21 Q. Okay.

22 When you looked at the film here, the video  
23 that we just looked at during the break, did you see  
24 any actions that suggested to you that maybe that  
25 subdural bleeding came from what you saw on the

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1 video?

2 A. From the video, it seems like every time he  
3 went to the ground he went to -- he actually did the  
4 falling to the ground. So I did not see a distinct  
5 head injury occurring on the ground; but again, I'd  
6 have to look at it a little bit better.

7 Q. Right. I understand that.

8 A. But -- yeah.

9 Q. But -- so from what you've seen, would you  
10 agree that it's most likely that the subdural  
11 bleeding came from the automobile collision he was  
12 involved in?

13 A. Looking at the mechanisms of injury, then  
14 the -- the motor vehicle accident would have been  
15 the more substantial as far as causing that injury,  
16 yes.

17 Q. Okay.

18 If, hypothetically, Mr. McBrayer did, in  
19 fact, sustain that injury from the car wreck and  
20 sustained -- I'm going to use the word diffuse --

21 A. Uh-huh.

22 Q. -- hemorrhaging across his brain, what  
23 effect does that have or does that have the  
24 potential to have on behavior --

25 A. Uh-huh.

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1 Q. -- things like that, within a reasonable  
2 degree of medical probability?

3 A. Well, again, it is small and it's less than  
4 10 milliliters, you know, which is -- again, in  
5 medical sense, that is -- that is not one that would  
6 even put somebody into the hospital, that type of --  
7 that -- that measurement of a subdural. It would be  
8 an observation type of thing, send somebody home.

9 It could have effects. Headaches would be  
10 a classic thing. It could make somebody have  
11 headaches, it could have eye pain, things of that  
12 sort.

13 As far as having a true decrease in -- in  
14 mental abilities, in my opinion, that wouldn't have  
15 -- that wouldn't have been -- not with this -- not  
16 with less than 10 milliliters.

17 Q. Okay.

18 What if we added to that that prior to the  
19 automobile wreck Mr. McBrayer was experiencing  
20 mental issues of depression -- for lack of a better  
21 word, I'll just use mental breakdown type  
22 characteristics. If you added that to a person  
23 suffering from those mental issues, then involved in  
24 a wreck, hitting his head causing diffuse bleeding  
25 inside the skull, what effect might that have on

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1 behavior?

2 A. Well, just -- just the -- the mental issues  
3 in itself would add somebody acting irrational,  
4 irradical, irrational and just not responding the  
5 way a normal person would as far as a person without  
6 the mental issues.

7 Q. I guess the question I'm trying to get is,  
8 would the -- following trauma to the head, while  
9 going through that, could that, within a reasonable  
10 degree of medical probability, exasperate the mental  
11 issues he was experiencing before the head trauma?

12 A. Yes; but it would be just as much as just  
13 being in a car accident without a head trauma, as  
14 far as my opinion.

15 Q. Okay.

16 A. So just crashing your car in itself would  
17 be -- cause acceleration of the -- of that.

18 Q. I gotcha. Okay. All right.

19 Okay. We were talking about excited  
20 delirium. And from what you've described, I take it  
21 you do agree, within a reasonable degree of medical  
22 probability, tasing somebody during an excited  
23 delirium episode would increase risk of death to the  
24 -- to the arrestee?

25 MR. WILLIAMS: Object to form.

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1 THE WITNESS: It potentially could,  
2 yes.

3 BY MR. WEBSTER:

4 Q. Okay.

5 What does the phrase unresponsiveness mean  
6 to you?

7 A. To me, it means that with physical or -- or  
8 verbal stimulation someone does not respond.

9 Q. Okay.

10 And is that a significant medical  
11 condition, if people are not responding to stimuli?

12 A. Yes.

13 Q. Can that cause -- lead to death?

14 A. Yes, it can.

15 Q. Okay.

16 If -- if someone who is -- has paralegal --  
17 paramedical, CPR type training, experiences somebody  
18 who's unresponsive, what should that person do in  
19 response to?

20 A. Well, your normal would be your -- your  
21 ABCs, airway -- make sure their airway's open, that  
22 they're breathing and they have circulation.

23 Q. All right. So first of all, how do you  
24 check and make sure the airway's open?

25 A. You would go ahead and see if you -- if the

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1 person's breathing, go ahead and feel for breath and  
2 stuff of that sort.

3 Q. Feel for breath, how do you do that?

4 A. Put your hand up to their mouth or -- or  
5 see if -- their rise or fall of their chest.

6 Q. Okay.

7 And then the B was what? I'm sorry.

8 A. Breathing.

9 Q. Oh, okay.

10 A. Would be again airway -- you know, again,  
11 make sure the airway's open and the breathing; and  
12 then the circulation would be taking pulses.

13 Q. Okay.

14 And then the -- and C was taking pulses --

15 A. Yes.

16 Q. -- you said?

17 What are you looking for when you're  
18 checking the pulse?

19 A. To see if there's a rapid heart rate or too  
20 slow. First of all, is there a heart rate, is  
21 somebody -- you know, is somebody deceased at this  
22 point. A rapid heart rate, slow heart rate,  
23 irregular heart rate, anything of that sort.

24 Q. Okay.

25 And if there is -- well, let me strike that

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1 and ask this question.

2 If someone has -- I know this sounds kind  
3 of crazy to ask it like this. But if somebody has  
4 experienced death, do their -- does their heart  
5 continue to beat for a period of time after --

6 A. It's going to --

7 Q. -- the point of death?

8 A. -- depend on what type of death. Cardiac  
9 death, no.

10 Q. Okay.

11 A. Brain death, yes --

12 Q. Okay.

13 A. -- to a point.

14 Q. And brain death comes from what?

15 A. A lack of oxygen to the brain.

16 Q. Okay.

17 Now, a while back you were telling us about  
18 how excited delirium including the struggle and the  
19 use of the tasers and the presence of the chemicals  
20 in the blood all create -- I think you used the  
21 phrase perfect storm.

22 A. Correct.

23 Q. If we added to that during the process of  
24 the struggle a restriction on breathing, what play,  
25 if any, would that have in the cause of death?

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1 A. If you would add they're restricted of  
2 breathing, yes. A lack of oxygen -- restriction of  
3 the breathing would lead to a decreased oxygen in  
4 the blood, which would -- going to accentuate --  
5 accentuate everything, just increase it up.

6 Q. Obviously there are many ways to reduce  
7 oxygen in breathing; but if it was done by means of  
8 compression on the chest for a period of say seven  
9 to nine minutes, could that act itself severely  
10 restrict oxygen to the -- to the body?

11 A. Yes, it could.

12 Q. Are you familiar with the phrase  
13 compressive asphyxia?

14 A. Yes. Traumatic --

15 Q. What --

16 A. -- compressive asphyxia.

17 Q. What does that mean to you?

18 A. That is where somebody -- a body's in a  
19 position or something is on the body in a position  
20 that does not allow the chest to rise.

21 When you breathe, when you inhale, just by  
22 definition, you expand your chest so to get the --  
23 to get the -- to get the oxygen into your lungs. As  
24 you exhale, your -- your chest deflates. If you  
25 cannot expand your chest, then you're -- then you

1 cannot intake oxygen into your lungs.

2 In compressive type of asphyxia,  
3 classically you'll see petechiae and burst blood  
4 vessels in the conjunctiva of the eyes and then  
5 ultimately the face, especially if they -- someone  
6 passes away from it.

7 Q. Okay.

8 Now, as I -- have you seen medical study,  
9 though, that suggests that, unlike choking from the  
10 front with my hand on somebody, that chest  
11 compressing asphyxia usually is not relat- -- is not  
12 associated with petechiae in the eye? Have you ever  
13 seen medical literature to that effect?

14 A. I have not.

15 I -- I've done a lot of positional  
16 asphyxias; and in the cases that I have, they have  
17 petechiae usually above the area of compression, not  
18 only of the -- of the eyes, of the face, of the neck  
19 area if it's above it and also a lot of times in the  
20 gingiva of the -- of the mouth.

21 Q. Okay.

22 Well, are -- are you familiar with an  
23 periodical known as the Journal of Forensic Science?

24 A. Yes.

25 Q. Is that an arti- -- a periodical that you

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1 ascribe to?

2 A. Yes.

3 Q. Have you seen the study by Ely and Hirsch  
4 in the Journal of Forensic Science dated 2000 -- the  
5 year 2000 --

6 A. Off the top of my head, no.

7 Q. I'm sorry. Let me give you the title --

8 A. Sure.

9 Q. -- before you answer. I apologize for  
10 interrupting you.

11 A. That's okay.

12 Q. -- entitled Asphyxial Deaths and Petechiae:  
13 A Review?

14 A. On the -- no, I -- I don't remember if I  
15 did or not, truthfully.

16 MR. WEBSTER: Okay.

17 Let me -- let me -- let's mark this  
18 Exhibit 2.

19 (Whereupon, Plaintiff's Exhibit 2 was  
20 marked for identification.)

21 BY MR. WEBSTER:

22 Q. I realize you haven't had a chance to look  
23 at this then based on what you told us, but I would  
24 like you to take a look at it very briefly.

25 A. Yes.

1 Q. I'm not going to -- this is not intended to  
2 test your opinion about this article, 'cause I know  
3 you would otherwise want to read it and study it and  
4 things like that. But I do want to ask you if  
5 you'll flip over to the third page, you'll see where  
6 I highlighted a couple of statements they made in  
7 there. And I just want to ask you your opinion  
8 regarding those statements.

9 The first one says -- and I quote --  
10 considering all of the foregoing observations, it is  
11 our contention that no relationship exists between  
12 the develop of -- development of petechiae and the  
13 presence or absence of asphyxia.

14 Do you agree or disagree with that --

15 A. Well --

16 Q. -- as a general rule of --

17 A. I would --

18 Q. -- practice?

19 A. I would have to say, of course, the same --  
20 considering all the foregoing observations -- which  
21 I haven't read what the foregoing observations were,  
22 which kind of puts me at a little bit of a --

23 Q. I agree.

24 A. -- at a disadvantage here. But just a  
25 statement that the presence or absence of a six --

1     okay. No relationship between the development of  
2     petechiae and the presence or absence of asphyxia.

3             I honestly couldn't comment without reading  
4     the whole article, 'cause I -- I'm not quite sure --

5             Q. Okay.

6             A. -- what these foregoing observations are.

7             Q. All right. Fair enough.

8             And I'm not going to ask you to study the  
9     article, ask you -- let me ask you, though, about  
10    the last sentence that I highlighted where it  
11    says -- and I quote -- conversely, the occasional  
12    absence of facial plethora and petechiae in victims  
13    of chest compressions, traumatic asphyxia, is best  
14    explained by overwhelming crushing forces  
15    effectively compress the left ventricle and arrests  
16    further cardiac output thereby precluding cephalic  
17    venous congestion.

18            Would you agree with that statement?

19            A. If I'm interpreting what they're saying --  
20    which again, without reading the rest of the  
21    article, I couldn't be sure -- if they're saying a  
22    pressure is so severe on -- on somebody's chest that  
23    their heart cannot beat anymore, because if they're  
24    saying compresses the left ventricle and arrests  
25    further cardiac output, which means you're dead,

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1 then I would say yeah, I would not expect petechiae  
2 at that case.

3 Q. Okay.

4 A. But again, I'm not reading the whole thing.  
5 But if they're saying that if you have a heavy  
6 enough pressure on your chest where your heart  
7 stops, then petechiae probably wouldn't be there,  
8 'cause your heart's not pumping anymore.

9 Q. Okay.

10 Do you have an opinion, within a reasonable  
11 degree of medical probability, as to how much weight  
12 would have to be on the chest -- first question, how  
13 much weight to be on the chest to result in the  
14 phenomenon they talk about in that last sentence in  
15 the article?

16 A. It's going to depend on the size of the  
17 person, their musculature development. I mean,  
18 it's -- it's -- it's -- it's going to vary from  
19 person to person.

20 Q. Okay.

21 Can you plug in Mr. McBrayer's size in this  
22 and come to a conclusion?

23 A. Again, I -- I can tell you what his body  
24 habitus is. I mean, he was well developed, you  
25 know, and well nourished; but as far as his physical

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1 -- you know, he was actually mildly overweight. But  
2 as far as his physical, you know, muscles, as far as  
3 -- I couldn't go, 'cause I -- I don't know what his  
4 physical -- what's the word I'm looking for -- how  
5 physically fit he is.

6 Q. Okay.

7 A. Put it that way.

8 Q. All right.

9 A. I can tell you what I saw with the body,  
10 but that doesn't necessarily apply to --

11 Q. Okay.

12 A. -- his physical fitness as a live person.

13 Q. Okay.

14 Would -- would the weight of a man placing  
15 his knee on the back for a period of say two or  
16 three minutes be enough, in your opinion?

17 A. Again, it's going to -- it's a case to case  
18 basis. It would have to depend on this person's  
19 shape, how much of the -- you know, somebody having  
20 their knee on somebody's chest, if -- if -- if  
21 they're -- that's all that's on the chest and the  
22 whole body weight of the person is completely off  
23 the ground at that point other than the knee, that's  
24 one thing. If the other -- if the same person's  
25 knee is on the ground taking some of the weight, it

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1 -- it just -- you wouldn't be able to -- you can't  
2 really -- there's not a -- there's not a formula you  
3 can use that fits every case. You would have to  
4 look at all the individual cases.

5 Q. Okay. Sounds -- that's fair enough.

6 Suffice it to say, though, that placing a  
7 knee or a hand or an elbow with some or all of your  
8 body weight on it when a man's laying face down in  
9 the dirt, hands handcuffed behind his back, that  
10 could contribute to a reduction in oxygen that is  
11 already a bad situation with the excited delirium to  
12 begin with, you would agree with that, wouldn't you?

13 A. I would say --

14 MR. WILLIAMS: Object to form.

15 All right.

16 THE WITNESS: I would say it has the  
17 potential to, again.

18 BY MR. WEBSTER:

19 Q. Okay.

20 I had asked you about the prevalence of  
21 excited delirium. I didn't quite follow up with a  
22 final question I had for that.

23 Have you done any study or research to find  
24 out what the prevalence of excited delirium is  
25 nationwide as an issue for police officers to

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1 confront?

2 A. No, I have not.

3 Q. Okay.

4 Haven't read any police articles or seen  
5 training videos or anything like that --

6 A. No.

7 Q. -- on excited delirium?

8 Okay.

9 A. No. I mean, as far as my studies of it  
10 through -- through the -- this -- you know, through  
11 medical training, yes; but as far as -- no, as far  
12 as anything recently, no.

13 Q. Well, when you say your research and your  
14 training, does that touch on the prevalence of  
15 excited delirium in our society?

16 A. Again, not as far as -- prevalence is going  
17 to have to with -- with -- you're going to have to  
18 take the time frame that we're talking about.

19 So, you know, all I know is it's not -- it's not  
20 common, it's -- you know, in my -- in my case as far  
21 as my practice and my peers' practice, meaning  
22 people I've worked with, we -- we don't commonly see  
23 it.

24 Q. Okay.

25 Kratom, by the way, you said you researched

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1 that. You did find out that kratom is actually  
2 legal to use in the state of Georgia?

3 A. It -- it is right now as far as -- yes.

4 Q. Okay.

5 A. There -- there's been some actions to try  
6 to make it illegal, but as far as -- and that's in  
7 the federal realm.

8 Q. Right.

9 A. So yes.

10 Q. And to your knowledge, it was legal to buy  
11 and use in 2019?

12 A. As from my knowledge, yes.

13 Q. Okay.

14 All right. I'll -- I think I'm getting  
15 close to being through, but I want to ask you this  
16 questions (sic) back on the -- the topic of  
17 unresponsiveness.

18 I had asked you what a medically trained  
19 person should do to deal with unresponsiveness and  
20 you said that the ABCs, airway, breathing and  
21 cardiac checking the pulse stuff. Can  
22 unresponsiveness be dealt with while an arrestee is  
23 in the back seat of an automobiles (sic) with his  
24 hands handcuffed behind his back and his feet  
25 strapped together?

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1 MR. WILLIAMS: Object to form.

2 BY MR. WEBSTER:

3 Q. Can it be dealt with effectively, I should  
4 say?

5 A. I'm going to -- what do you mean deal with?

6 Q. Well --

7 A. I -- I -- I guess I need to under- -- an  
8 explanation of that.

9 Q. Thank you. That's fair enough.

10 What I'm asking you is, if a person in the  
11 back seat of a automobile is handcuffed behind his  
12 back, his feet are strapped together and he becomes  
13 unresponsive while in that back seat, would you, as  
14 a licensed physician, expect someone to be  
15 effectively -- be able to effectively examine and  
16 try to respond to the unresponsiveness while the  
17 arrestee is in the back seat of that car?

18 MR. WILLIAMS: Object to form.

19 THE WITNESS: I would say no, they --

20 I would remove them from the vehicle.

21 BY MR. WEBSTER:

22 Q. Why so?

23 A. To be able to fully evaluate the person.

24 Q. Okay.

25 A. To fully evaluate the person and also to --

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1 as a medical professional, wanting to put him on a  
2 monitor and to see exactly what's going on.

3 Q. Okay.

4 So in that -- and I realize this is a very  
5 limited analysis --

6 A. Uh-huh.

7 Q. -- and I realize I've kind of taken you out  
8 of the --

9 A. Uh-huh.

10 Q. -- the crime lab setting; but you would  
11 agree then that if somebody is in the back seat of a  
12 car handcuffed, feet strapped, becomes unresponsive,  
13 the car itself makes it very difficult for you to  
14 deal with that unresponsiveness --

15 MR. WILLIAMS: Object to the form.

16 BY MR. WEBSTER:

17 Q. -- if not impossible?

18 A. I -- yes. I would have to remove the body  
19 -- remove the -- remove the person to be able to  
20 evaluate them and -- and -- and also treat them.

21 Q. Okay.

22 Is there a frame of time -- if somebody  
23 becomes unresponsive, is there a frame of time as to  
24 how long you have to be able to save them from that  
25 unresponsiveness?

1           A. Well, again, the problem is we -- we  
2 haven't established what the definition of  
3 unresponsive is to the point meaning do they have a  
4 pulse, are they breathing or are they -- or are they  
5 just unconscious, where obvious -- are they just  
6 unconscious, you know, classically, you know, passed  
7 out, or are they breathing or is there circulation.

8           So without knowing those factors, I  
9 couldn't say. I mean, if the heart's not pumping,  
10 then we have an emergency. If you're not breathing,  
11 that's an emergency. But if you're breathing and  
12 you have a heart rate and you're just not responding  
13 because you're passed out, that's -- that's --  
14 that's a different situation.

15          Q. I understand. Such --

16          A. I mean, it's still going to -- it still, in  
17 my opinion as a medical doctor, would -- would need  
18 -- would -- would need attention; but as far as  
19 without knowing those other things, I couldn't give  
20 you a time frame.

21          Q. Okay. Let me -- let me put some things in  
22 there then to -- just to see if you have an opinion.

23               If a person stops breathing while in the  
24 back seat of a car with his hands handcuffed behind  
25 his back, his legs strapped together, from the

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1 moment he stops breathing, how long does he have to  
2 be able to have any chance of recovering from that  
3 condition?

4 A. Again, you know, I can't put specific  
5 numbers; but -- but they -- but, you know, again,  
6 just thinking about basic CPR, you know, somebody  
7 that you come up upon, they talk about the minutes.  
8 You know, so we're talking about, you know, a period  
9 of minutes that you would have to respond to that.  
10 Again, how many, I couldn't tell you for sure. I  
11 would be definitely be within ten minutes. You  
12 know, it could be less, it could be more.

13 MR. WEBSTER: Okay. All right.

14 Let's go off the record for a  
15 second.

16 THE VIDEOGRAPHER: Off the record at  
17 2:59.

18 (Off the record.)

19 THE VIDEOGRAPHER: We are back on the  
20 record at 2:59.

21 MR. WEBSTER: Dr. Kraft, I have no  
22 further questions. Thank you very much for  
23 your time. You've been very helpful  
24 today --

25 THE WITNESS: You're welcome.

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1 MR. WEBSTER: -- and I appreciate  
2 it.

3 EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Dr. Kraft, my name is Terry Williams; and I  
6 represent the defendant, Sheriff Gene Scarbrough of  
7 Tift County. And so I'm going to just follow up  
8 with some questions based on what you've testified  
9 to thus far.

10 Going back to your classification of this  
11 situation as a homicide -- and as I understand it  
12 from what you've said and from looking at your  
13 report, you determined that it was best  
14 classified -- that's the term you used, best  
15 classified -- as a homicide as far as manner of  
16 death. And am I correct in saying that it was  
17 because there was interaction with deputies during  
18 the events leading up to him passing away?

19 A. Yes. That is correct.

20 Q. So -- but as you stated, the actions of the  
21 deputies, both the use of the taser and the physical  
22 restraint, by themselves would not have caused  
23 death, correct?

24 A. The findings at autopsy, yes. As far as  
25 the findings at autopsy which --

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1 Q. Right.

2 A. -- which again, per investigation, were  
3 result of the physical struggle and the -- and the  
4 tasing, yes --

5 Q. Right.

6 A. -- in themselves would not have caused his  
7 death.

8 Q. Right.

9 To be clear about that, the findings that  
10 you made during the autopsy did not indicate that  
11 the use of the taser or the physical restraints  
12 would have caused death by themselves?

13 A. That is correct.

14 Q. So it was really only the fact that he --  
15 that Mr. McBrayer had drugs in his system, which  
16 both were stimulants, and was stimulated already  
17 because of whatever his excitement was, either from  
18 the drugs or perhaps mental issues, that actually  
19 led to the death; is that correct?

20 A. (No response.)

21 Q. In other words, those -- those factors had  
22 to be present for the death to occur since it was --

23 A. That -- that is correct.

24 Q. -- based -- based on what you found --

25 A. You had to have everything together.

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1 Q. All right.

2 A. Yes.

3 Q. So, in fact, the -- when the deputies  
4 encountered Mr. McBrayer, as the video that you  
5 watched earlier indicate, he already seemed to be in  
6 excited state, correct?

7 A. Yes. He seemed -- according to the video  
8 and from the reports that I had, he was -- he was  
9 running around and he was -- he was acting  
10 irrational and excited, yes.

11 Q. All right.

12 He was yelling, talking fast, those kind of  
13 things, correct?

14 A. Yes.

15 Q. And those are things -- symptoms that you  
16 associate with evidence of excited delirium,  
17 correct?

18 A. That's a -- that's a part of it, yes.  
19 That's what I -- yes.

20 Q. All right.

21 The excited state and the delirious state,  
22 both of those states can actually be caused by the  
23 drugs that were in Mr. McBrayer's system, correct?

24 A. Yes, they could have. Yes.

25 Q. Okay.

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1 And we've already established that he had  
2 cocaine in his system, correct?

3 A. That is correct.

4 Q. And he had this kratom herb or drug,  
5 whatever it is, right?

6 A. That is correct.

7 Q. And kratom is also a stimulant, correct?

8 A. Yes, it is.

9 Q. And I've noticed -- I did a little research  
10 on it -- kratom is actually -- has been known to  
11 cause death in a certain number of people,  
12 particularly when combined with other drugs such as  
13 cocaine.

14 Are you familiar with that? Did you see  
15 that in your research?

16 A. Yes, I did.

17 Q. Okay.

18 And in case -- this situation we know that  
19 Mr. McBrayer had both cocaine and kratom in his  
20 system, correct?

21 A. That is correct.

22 Q. The combination of those two drugs may well  
23 have caused his death without any other factors  
24 being involved, true?

25 A. It's possible, yes.

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1 Q. And I've seen other cases involving people  
2 who have died with cocaine in their system, I've  
3 done enough research to see there's research out  
4 there that shows that cocaine itself can cause  
5 disturbances in heart rhythm, true?

6 A. Correct.

7 Q. It can cause heart attacks, correct?

8 A. Correct.

9 Q. It can cause heart failure --

10 A. Correct.

11 Q. -- correct?

12 And it can cause respiratory failure,  
13 correct?

14 A. Secondary to the heart, yes.

15 Q. Okay.

16 You agree that symptoms of cocaine  
17 intoxication can include extreme agitation and  
18 aggressive behavior?

19 A. That is correct.

20 Q. And we saw that with Mr. McBrayer in the  
21 video, true?

22 A. That is correct.

23 Q. Cocaine also can cause hallucinations and  
24 paranoia?

25 A. That is correct.

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1 Q. We saw that also in the video?

2 A. That is correct.

3 Q. Cocaine can cause rambling speech and rapid  
4 talking, correct?

5 A. Correct.

6 Q. We saw that in the video --

7 A. Yes.

8 Q. -- correct? Okay.

9 I also noticed in -- with the kratom that  
10 it's also described as a psychotropic chemical or  
11 drug?

12 A. Correct.

13 Q. Okay.

14 And that can also cause mind-altering  
15 effects on someone, such as hallucinations and  
16 paranoia?

17 A. That's -- yes.

18 Q. Especially if combined with another drug  
19 which also causes those same things, true?

20 A. That is correct.

21 Q. You found no evidence on autopsy that any  
22 pressure that had been put on Mr. McBrayer's  
23 torso/upper back doing the restraint caused any type  
24 of physical injuries to him?

25 A. I found evidence of some abrasions and --

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1 and bruising and things of that sort, but as far as  
2 -- as far as -- and -- and some of them, in my  
3 opinion, resulted from the restraint; but in  
4 themselves, they would not have caused his death.

5 Q. Okay. Right. But I -- I'm just really --  
6 I should have been more specific.

7 There's no indication that there was any  
8 type of internal injuries caused from like a  
9 crushing -- such weight that would have caused  
10 internal type injuries from restraint, there was  
11 nothing found on autopsy on that?

12 A. That is correct.

13 Q. Okay.

14 A. Everything was soft tissue. There was no  
15 bone fractures or internal organ injuries, other  
16 than the -- the -- the bleeding -- the subdural  
17 hemorrhage around the brain.

18 Q. And the subdural bleeding that you saw --  
19 which you've described as being pretty small, fairly  
20 minor --

21 A. That's correct.

22 Q. -- correct?

23 -- would -- that would not have been  
24 observable to deputies at the scene in the -- in the  
25 dark dealing with Mr. McBrayer, would it?

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1 A. No, it would not.

2 Q. Okay.

3 The abrasions and scrapes that you  
4 described that you saw about Mr. McBrayer's face and  
5 head, you really can't say how those would have been  
6 caused, whether it would have been from the  
7 automobile accident that he had, his own running  
8 around, running into things or his face being down  
9 in the dirt, true? You wouldn't be able to --

10 A. That is correct. I couldn't say exactly  
11 what caused them.

12 Q. It could have happened during any of those  
13 events?

14 A. Yes.

15 Q. Going back to the -- the taser, are you  
16 familiar enough with -- with tasers to know how they  
17 sound when they're being deployed? I mean, have you  
18 been around them enough or seen videos to know  
19 how --

20 A. As far as the -- if we're talking about  
21 that pulse sound, yes.

22 Q. Yeah.

23 So are you familiar with or have you ever  
24 heard that if you hear those loud clicks, that  
25 indicates the taser's not working, it's not

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1 effectively delivering the electrical conduct?

2 A. Actually I've never heard of that, no.

3 Q. Okay.

4 That it'll sound differently if there's a  
5 good contact? You're not familiar enough with --

6 A. No, I'm not.

7 Q. Okay.

8 A. Not that familiar with them.

9 Q. Well, you -- do you agree, though, based  
10 upon what we see in the video that Mr. McBrayer  
11 never seems to show any effects from the taser  
12 deployments?

13 A. That is correct. It does not -- the  
14 classic response that normally you would see or that  
15 you would expect to see, he did not have.

16 Q. Right. Which is the immobilization or the  
17 -- the tightening up, the muscle constriction and  
18 falling to the ground?

19 A. Correct.

20 Q. In fact, he continues to move and continues  
21 talking throughout the time that the tasers that  
22 are -- attempted to be deployed, correct?

23 A. Per the video, yes. Uh-huh.

24 Q. And I know you watched one of the other --  
25 other than the one we've seen today, you watched a

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1 different video, right --

2 A. Yes.

3 Q. -- of the same -- did you see the video  
4 where it shows the officers attempting to hold him  
5 down to get the handcuffs and the -- the restraints  
6 on him?

7 A. I did see -- I -- I have seen a video of  
8 that, yes.

9 Q. Okay.

10 And you --

11 A. Again, I don't know if there's multiple  
12 ones of it. I know I've seen one at least.

13 Q. And do you recall that during the time that  
14 the officers -- or either got their hands on his  
15 back or at some points a knee on his back from a  
16 squatting position to hold him down that during that  
17 time McBrayer is continuing to talk and yell and  
18 move --

19 A. Yes.

20 Q. -- about?

21 A. From -- from my -- right. From my  
22 observation, right, he was -- you know, he's still  
23 moving and he's still talking, he's verbally  
24 talking. Uh-huh.

25 Q. And would you agree from the beginning to

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1 the end of the time when they finally get him fully  
2 restrained and fully cuffed he's moving, he's  
3 talking the entire time?

4 A. On the video I saw, yes.

5 Q. Yes. Okay.

6 And doesn't that indicate to you that he  
7 was able to breathe sufficiently, the fact that he  
8 is talking and moving about?

9 A. Yes.

10 Q. Okay.

11 Does -- was there any indication, either  
12 from the results of your autopsy or of what you saw  
13 in the video, that there was a significant  
14 restriction of his -- of McBrayer's ability to  
15 breathe during this incident?

16 A. Not that I have found, no.

17 MR. WILLIAMS: Okay.

18 (A pause ensued.)

19 BY MR. WILLIAMS:

20 Q. You talked a good bit earlier in your  
21 deposition about the release of those catecholamines  
22 during the excited delirium. And -- and those are  
23 released through the adrenal glands, right, and  
24 basically --

25 A. That is correct.

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1 Q. -- we kind of refer to them generally as  
2 adrenaline --

3 A. Yes.

4 Q. -- and norepinephrine?

5 A. Yes, that's another name for them. Uh-huh.

6 Q. Okay. So epinephrine and norepinephrine --

7 A. Yes.

8 Q. -- are two -- the two types?

9 A. (Witness nods head affirmatively.)

10 Q. Those will also be released during an --  
11 just an excited state in general, correct?

12 A. That is correct.

13 Q. So when we -- we get scared by something or  
14 that you're almost in a accident and your heart rate  
15 goes up, that's that -- you're releasing those  
16 catecholamines, correct?

17 A. Yes.

18 Q. And you would expected that Mr. McBrayer  
19 would have been releasing those catecholamines from  
20 the -- before he ever even got into the physical  
21 altercation with the deputies, correct?

22 A. That is correct.

23 Q. Okay.

24 There's no way to measure now how much he  
25 would have been experiencing before, during or after

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1 the -- the altercation with the deputies, correct?

2 A. That is correct.

3 MR. WILLIAMS: Hold on just a second.

4 (A pause ensued.)

5 MR. WEBSTER: Okay. You going to be  
6 just a second or you want to go off the  
7 record or --

8 MR. WILLIAMS: No. I just have one  
9 thing.

10 MR. WEBSTER: Oh, okay.

11 MR. WILLIAMS: One note I had made  
12 earlier, but it was on this document that  
13 I...

14 MR. WEBSTER: Okay.

15 (A pause ensued.)

16 MR. WILLIAMS: Okay. So...

17 BY MR. WILLIAMS:

18 Q. None of the injuries that you saw on  
19 autopsy, these blunt force trauma injuries that were  
20 -- you often described as being super- --  
21 superficial abrasions, some mild subdural --  
22 subdural hematoma, subdural bleeding, none of those  
23 would have been life-threatening injuries either,  
24 correct?

25 A. In my opinion, no.

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1 Q. Okay.

2 And because of the potential -- well,  
3 because of the effects of the cocaine and the kratom  
4 and the enlarged heart as being possible  
5 explanations for his cause of death, you can't say,  
6 to a reasonable degree of medical probability, that  
7 he would have lived but for the use of the taser and  
8 the altercation with the deputies, correct?

9 A. It -- I always -- when -- when you use that  
10 term, that always messes me up. So I have to -- can  
11 you ask it to me a different way just because...

12 Q. So you can't say that Mr. McBrayer, with  
13 these drugs he had in his system, with his enlarged  
14 heart and the -- all the other things that were  
15 going on, would have lived but for the use of the  
16 taser and the restraint by the deputies in this  
17 situation? In other words, if they hadn't used the  
18 taser and restrained him, he would have lived, you  
19 can't say that to a reasonable degree of  
20 probability?

21 A. I cannot say that. That is correct.

22 Q. Because all these other things, the drugs  
23 in his system, his excitement and all those things  
24 could have led to his death?

25 A. Yes, they could.

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1 Q. Okay.

2 A. But I would say since it all happened,  
3 that's why I have to bring it into -- I cannot take  
4 one piece out without -- you just can't do it at  
5 postmortem.

6 Q. Right. 'Cause you have to --

7 A. Yes.

8 Q. -- look at all these potential factors?

9 A. That is correct.

10 Q. You can't say that any particular one of  
11 them would have caused his death regardless?

12 A. That is correct.

13 MR. WILLIAMS: Yeah.

14 All right. Thanks.

15 FURTHER EXAMINATION

16 BY MR. WEBSTER:

17 Q. What you can say, though, Doctor, is --  
18 within a reasonable degree of medical probability,  
19 is that the struggle and the use of the tasers  
20 contributed to the cause of death in this case?

21 A. Yes. They were additive to it, yes.

22 Q. And they were so additive to it that in  
23 classifying this case as either a homicide,  
24 accidental death, natural causes, you were  
25 satisfied, within a reasonable degree of medical

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1 probability, that this death is classified as a  
2 homicide?

3 MR. WILLIAMS: Object to the form.

4 Go ahead.

5 THE WITNESS: Yeah, I -- I -- I can't  
6 say that they're any more important than  
7 anything else but because they're there, I  
8 have to call it a homicide.

9 BY MR. WEBSTER:

10 Q. Okay.

11 So you're not changing your opinion on  
12 classification and you're not changing your opinion  
13 of the at least partial cause of death, the role of  
14 the struggle and the use of the taser?

15 A. That it -- that it was additive to  
16 everything, yes.

17 Q. Okay.

18 This question about still moving and  
19 talking when they had his -- their knee and their --  
20 and hands on his back and chest -- not on his chest.  
21 His chest was on the ground.

22 A. Correct.

23 Q. But on his back and his -- and there is a  
24 -- you did see in the videos a period of time when  
25 Officer Tripp had his hand at the base of the

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1 neck?

2 A. I did see that, yes.

3 Q. Okay.

4 First of all --

5 A. In the area of the back of the neck.

6 Again, I -- without -- right. I couldn't tell  
7 exactly where it was, but it was in the neck area.

8 Q. Okay.

9 First of all, those actions, while they may  
10 not be enough to stop breathing altogether, you do  
11 agree, within a reasonable degree of medical  
12 probability, that they would be sufficient to  
13 restrict breathing, to lower the amount of oxygen he  
14 would get into his body?

15 MR. WILLIAMS: Object to form.

16 THE WITNESS: Again, they potentially  
17 could. Without knowing exactly where these  
18 -- where the -- where they were and the  
19 amount of pressure, I couldn't say 100  
20 percent. I would -- but potentially they  
21 had the potential of causing that --

22 MR. WEBSTER: Okay.

23 THE WITNESS: -- yes.

24 BY MR. WEBSTER:

25 Q. All right.

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1 And for the benefit of whoever is going to  
2 listen to and read this deposition -- and we don't  
3 know who exactly who all going to do yet -- when you  
4 got Mr. McBrayer's body for the autopsy, you  
5 described that his -- I'm trying -- his liv- -- his  
6 livor -- I don't know how y'all -- you pronounce  
7 that. I always --

8 A. Yes, livor.

9 Q. -- say livor.

10 A. Uh-huh.

11 Q. -- was actually red and purple throughout  
12 the back side of his body, the posterior side; is  
13 that correct?

14 A. That is correct.

15 Q. And that's because as he lay there for two  
16 days waiting for the autopsy blood settled down into  
17 the back side of his back, pooled in his back and  
18 torso?

19 A. That is correct.

20 Q. So I know you're trained and you're  
21 experienced. So I'm sure you can still see bruising  
22 and distinguish bruising versus just normal pooling  
23 through livor -- in the livor process; but you do  
24 agree that if the back's already red and purple from  
25 pooling of blood, that makes it far more difficult

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1 to assess extensive bruising and things of that  
2 nature on the back?

3 A. Not necessarily. I mean, honestly, because  
4 the people who arrive at our office are in a body  
5 bag and they're always lying on their back, the  
6 majority of our people have red/purple posterior  
7 livor. That's the majority. And if there's a  
8 bruise there, especially on a Caucasian person, a  
9 white person, it -- I -- I can tell it.

10 Q. You can still see a bruise even --

11 A. Yeah.

12 Q. -- amidst the red/purple livor?

13 A. That -- yes, I can.

14 Q. Okay. All right.

15 One final question. Do you know in -- in  
16 producing the history of this case for you to form  
17 your opinions, do you know exactly how many times  
18 Mr. McBrayer was tasered by Officers Spurgeon and  
19 Tripp?

20 A. I can just say from what I wrote in my  
21 summary and interpretation, and that was based on  
22 the GBI investigation. Let's see...

23 (A pause ensued.)

24 A. I have it -- deploying the taser once,  
25 reengage, recycle the taser (pronunciation) --

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1 taser. So that would be twice.

2 (A pause ensued.)

3 A. And then we have the stun -- then we have  
4 the drive -- the drive stun -- stunning, which is  
5 not the probes but the actual -- so -- and that was  
6 what I found at autopsy. I found -- well, I -- I  
7 found two probe areas on -- on the autopsy and then  
8 I found this area of -- which is consistent with the  
9 -- with -- consistent with the drive because that's  
10 using the prongs that are built into the machine  
11 that were on his right lateral torso area.

12 Q. Does the body show evidence of whether  
13 electricity went through it in any of those areas  
14 that you saw?

15 A. I just basically -- as far as electricity,  
16 no, one hundred percent. What I did see is I saw  
17 puncture where the probes went in. The puncture  
18 wounds did show a localized hemorrhage around them,  
19 and then where the drive -- drive stun was.

20 (A pause ensued.)

21 A. Actually I did not -- there are some areas  
22 of abrasion, eroded areas of the -- of red defects,  
23 but I didn't see any hemorrhage associated with  
24 those.

25 Q. So those red defects, would that be

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1 evidence of electricity going in and through the  
2 drive stun?

3 A. Not necessarily, because if I hit you with  
4 them, I can make a -- I can make the same mark if I  
5 just hit you with it.

6 Q. So you've seen drive stun markings before,  
7 I assume?

8 A. Yes.

9 Q. Did his appear any different than any other  
10 drive stun markings that you've seen?

11 A. No, they did not.

12 Q. Okay.

13 And finally, you would agree then that when  
14 we were talking about how the use of a taser can  
15 influence the adverse aspects of the excited  
16 delirium, you would agree that multiple tasering  
17 increases the risk and the role of that taser effect  
18 on excited delirium? In other words, if I stun up  
19 once, you get something; but if I stun you two --

20 A. Correct.

21 Q. -- or three times, it increases the risk --

22 A. It would in- -- right. It would increase  
23 the -- the norepinephrine and the epinephrine, the  
24 catecholamines response and things of that sort,  
25 yes.

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1 MR. WEBSTER: All right.

2 Thank you very much, Doctor. You've  
3 been very helpful.

4 THE WITNESS: No problem.

5 MR. WEBSTER: I appreciate your  
6 time.

7 THE WITNESS: You're welcome.

8 MR. WILLIAMS: Thank you.

9 THE WITNESS: Thank you.

10 MR. WILLIAMS: Good to meet you.

11 THE WITNESS: Good to meet you.

12 THE VIDEOGRAPHER: This concludes the  
13 deposition of Dr. Kraft. We are off the  
14 record at 3:23.

15 (Deposition concluded at 3:23 p.m.)

16 (Signature reserved.)  
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C E R T I F I C A T E

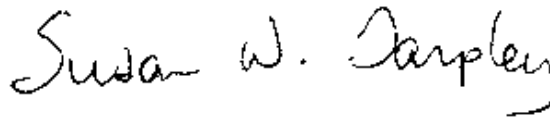
STATE OF GEORGIA:  
JASPER COUNTY:

I hereby certify that the foregoing deposition was taken down, as stated in the caption, and the colloquies, questions and answers were reduced to typewriting under my direction; that the foregoing transcript is a true and correct record of the evidence given.

The above certification is expressly withdrawn and denied upon the disassembly or photocopying of the foregoing transcript, unless said disassembly or photocopying is done under the auspices of Esquire Deposition Solutions and the signature and original seal is attached thereto.

I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of the action.

This, the 25th day of July 2020.



Susan W. Tarpley, CCR  
Georgia CCR B-1489

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D I S C L O S U R E

STATE OF GEORGIA ) DEPONENT:

JASPER COUNTY ) MARYANN GAFFNEY-KRAFT, DO

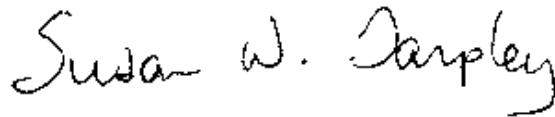
Pursuant to Article 8.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as an independent contractor for Esquire Deposition Solutions.

Esquire Deposition Solutions was contacted by the offices of Craig A. Webster, PC, to provide court reporting services for this deposition. Esquire Deposition Solutions will not be taking this deposition under any contract that is prohibited by OCGA 15-14-37 (a) and (b).

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Susan W. Tarpley, CCR  
Georgia CCR B-1489

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DEPOSITION ERRATA SHEET

Our Assignment No. J5682131

Case Caption: McBrayer v. Hon. Gene Scarbrough

DECLARATION UNDER PENALTY OF PERJURY

I declare, under penalty of perjury, that I have read the entire transcript of my deposition taken in the above-captioned matter or the same has been read to me and the same is true and correct, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the \_\_\_\_ day of \_\_\_\_\_ 2020.

\_\_\_\_\_  
Maryanne Gaffney-Kraft, DO

MARYANNE GAFFNEY-KRAFT, D.O.  
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